

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

THIS DOCUMENT RELATES TO:
*City of Fargo, North Dakota v. Purdue
Pharma L.P. et al.*
Case No. 1:19-op-45675-DAP

MDL No. 2804

Case No. 1:17-md-2804-DAP

Judge Dan Aaron Polster

**PLAINTIFF CITY OF FARGO'S FURTHER RESPONSE TO PLAINTIFFS' RENEWED
AND AMENDED MOTION FOR CERTIFICATION OF RULE 23(b)(3)
CITIES/COUNTIES NEGOTIATION CLASS**

Plaintiff, the City of Fargo, North Dakota, hereby submits this further response to Plaintiffs' Renewed and Amended Motion for Class Certification of a Settlement Class ("Amended Motion") (Dkt. No. 1820).¹

By way of summary, the City of Fargo filed its complaint against the opioid manufacturer and distributor defendants on July 9, 2019 and, therefore, did not meet the Amended Motion's proposed deadline of June 14, 2019 to be included in the "Litigating Entities" voting pool. The City of Fargo filed a response asking this Court to extend the deadline by which a city or county could be considered a "Litigating Entity" to July 9, 2019, the date the Amended Motion was filed, or recognize Fargo as a Litigating Entity in response to its request. On August 6, 2019, the day of the hearing on the Amended Motion, counsel for the City of Fargo spoke with certain members in Plaintiffs' leadership about whether the City of Fargo should consider serving as a representative of the Non-Litigating Entities.

¹ Plaintiff City of Fargo incorporates herein by reference its previously filed Response to Plaintiffs' Renewed and Amended Motion for Certification of Rule 23(b)(3) Cities/Counties Negotiation Class (Dkt. No. 1953).

Having had an opportunity to consider this proposal, the City of Fargo respectfully requests that, to the degree the Court enters an order with the proposed Litigating Entity cut-off date of June 14, 2019, the City of Fargo be appointed as a class representative or liaison for the Non-Litigating Entities. The City believes it can make a meaningful contribution in this role for the reasons set forth below.

A. The City of Fargo and the Other Non-Litigating Entities

While more than 1,200 entities filed lawsuits before June 14, 2019, more than 30,000 did not. The City of Fargo is among the more than 30,000 entities that did not. The City of Fargo understands the need for a cut-off date, but it also understands, first-hand, that there are any number of practical, logistical and resource-driven reasons that may prevent a public entity from filing a lawsuit or affect the timing of filing. It also understands that the decision to not file a lawsuit is not necessarily an indication of the resources devoted to fighting the epidemic or the need for relief. This is particularly true for small- to mid-size cities, such as the City of Fargo and the vast majority of the other 30,000 plus Non-Litigating Entities.

Like so many communities, the City of Fargo has been hit hard by the opioid epidemic. In 2016, the City reported unprecedented overdoses and addiction. The City took immediate and decisive action to resist the growing epidemic, even as it was not litigating against the manufacturers and distributors. It now stands ready to assist and represent entities that are grappling with the same demands in the event of a global settlement opportunity.

B. The City of Fargo Has Demonstrated Collaborative Leadership That Would Benefit Negotiation Class Members and this Court.

Should the Court grant the Amended Motion with the June 14 cut-off date, the City of Fargo believes it can contribute meaningfully as a representative of the Non-Litigating Entity voting pool. In the last three years, the City of Fargo has led creative and collaborative efforts to

combat the opioid epidemic in North Dakota. It can apply that knowledge to the benefit of all affected entities here, litigating or not.

Fargo Mayor, Timothy Mahoney, M.D., is a practicing physician who has taken a hands-on role in the City of Fargo's fight against the opioid epidemic. He would continue to bring his experience as a physician and a mayor addressing this public health crisis to bear in this litigation. In reaction to startling local impacts of the epidemic in 2016, for example, Mayor Mahoney helped spearhead a project with four other North Dakota mayors across two counties, the Mayors Blue Ribbon Commission on Addiction ("Mayors Commission"). The Mayors Commission draws on the experience of lawmakers, health care providers and other community leaders in coordination with the Dakota Medical Foundation to identify the communities' most acute needs during the crisis and act on them in a collaborative manner.

The City of Fargo also operates the Fargo Cass Public Health Department ("Fargo Public Health"), which provides public health services, not only for Fargo, but for all of Cass County. Fargo Public Health has taken a lead in addressing the community's opioid-related needs, including those identified by the Mayors Commission. Showing remarkable leadership, Fargo Public Health and its partners started a variety of opioid-related programming *before* receiving any federal, state or other outside grant money. And for more than two years, Fargo Public Health has had a dedicated Substance Abuse Prevention Coordinator, Ms. Robyn Litke Sall, who focuses on opioid addiction, prevention, early intervention, treatment and recovery.

1. Proven Results

Harnessing the energy of its officials, and in collaboration with surrounding cities and counties, the City of Fargo has made significant strides. Opioid deaths dropped by nearly fifty

percent from 2016 to 2017 and dropped again in 2018. Consider the City's following achievements in the last two years.

a) In 2017, began Naloxone training for public safety departments (i.e., fire and law enforcement), social service agencies, probation officers, schools, businesses, citizens and clinics. From January to June 2019 alone, these programs recorded 95 opioid overdose reversals, and the City believes the reversals are underreported.

b) In 2018, began syringe services training and syringe exchange programs, providing Naloxone and Naloxone training directly to users. Since then, approximately 300 doses have been provided each month to users and their loved ones residing in Fargo, Cass County and other surrounding counties. The program also includes treatment referrals to individuals with substance disorders and reduces instances of hepatitis.

c) Established a Mobile Outreach Program, consisting of an unmarked squad car with trained personnel that go on runs when the regional dispatch center receives a 911 call reporting a substance abuse crisis. Among other things, the Mobile Outreach Vehicle responds instead of a response by fire, ambulance and police to substance abuse crises, and transports the individuals into the emergency centers, detoxification centers, or to Prairie St. John's Psychiatric Hospital in Fargo.

d) Provides urgent shelter at Fargo's Gladys Ray Shelter for individuals who have taken and are still under the influence of opioids, as well as other drugs and alcohol.

e) Developing a program where Naloxone can be provided by the pharmacist to the users free of charge for those who cannot afford to pay for it.

1. Effective Collaboration

As demonstrated by the Mayors Commission, the City of Fargo understands that no one entity can stop the epidemic alone and has worked with public and private entities across North Dakota and beyond to stretch resources and work cooperatively toward a common goal. The following are a few additional examples of Fargo's leadership in this respect.

a) Sharing information, such as in November 2018, when Fargo City Commissioner John Strand participated in a panel discussing smaller city successes and approaches to the opioid epidemic at the National League of Cities.

b) Providing the State of North Dakota and other local government entities with technical assistance, mentoring and shadowing services for opioid-related programs.

c) Taking an active role in bringing the first methadone treatment center to Fargo by working with third-party provider Community Medical Services.

d) Supporting North Dakota State University, School of Pharmacy's "One Rx Program" to train local pharmacies and pharmacists on better counseling for patients using prescription opioids.

e) Working with private local healthcare systems to monitor the effects of implementing the Center for Disease Control's opioid prescription protocols. This monitoring has shown a system-wide decrease in the number of opioids being prescribed.

f) Working with recovery-support housing groups to increase the number of beds and shelters providing recovery and shelter outside of the criminal justice system.

C. Conclusion

The City of Fargo stands ready to participate in this litigation in the most meaningful way possible. The City has a proven commitment and ability to respond creatively and effectively to

the devastating opioid epidemic. It will be honored to act as representative of or liaison to the Non-Litigating Entities if the Court chooses to appoint it to that role.

Dated: August 13, 2019

Respectfully submitted,

/s/ Jennie Lee Anderson

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